

**2005 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-AB377)**

Received: **02/27/2006**

Received By: **jkuesel**

Wanted: **Today**

Identical to LRB:

For: **Joseph Leibham (608) 266-2056**

By/Representing: **Eric Schutt**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **Elections - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Leibham@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

SSA to AB-377

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**Instructions:**

Per LCS -0107/2.

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 02/27/2006	lkunkel 02/28/2006		_____			Local
/1			rschluet 02/28/2006	_____	mbarman 02/28/2006	mbarman 02/28/2006	

FE Sent For:

<END>

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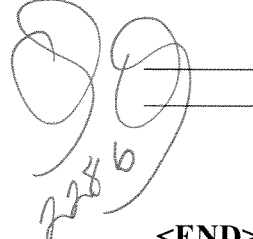
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FE Sent For:

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DN JRE

2005 - 2006 LEGISLATURE

Tue 2/28 10AM

Senate Substitute AmDT -

50596/1

LRB-2556/T

JTK:wlj:ch

HK

TU **2005 ASSEMBLY BILL 377**

April 27, 2005 - Introduced by Representatives DAVIS, FREESE, GARD, GUNDRUM, FRISKE, VOS, TOWNS, JENSEN, HINES, VRAKAS, J. FITZGERALD, PRIDEMORE, M. WILLIAMS, MOULTON, LAMB, KLEEFISCH, STRACHOTA, MUSSER, KESTELL, ALBERS, HUNDERTMARK, OTT, MURSAU, NISCHKE, VAN ROY, MCCORMICK, SUDER and KREIBICH, cosponsored by Senators LEIBHAM, ZIEN, BROWN and ERPENBACH. Referred to Committee on Campaigns and Elections.

(regenerate)

1 AN ACT **to amend** 6.22 (1) (intro.), 6.22 (5), 6.22 (6), 6.36 (1) (a), 6.86 (1) (b), 6.865  
2 (3), 6.87 (6), 7.51 (5) (b), 7.60 (5) (a), 7.70 (3) (a), 9.01 (1) (a), 9.01 (1) (ag) 1., 1m.  
3 and 2. and 9.01 (1) (b) (intro.); and **to create** 6.221, 6.865 (3m) and 9.01 (1) (am)  
4 of the statutes; **relating to**: absentee balloting by certain military electors.

***Analysis by the Legislative Reference Bureau***

PWS  
A

Currently, for the absentee ballot of any elector to be counted, the ballot must be received at the polling place serving the elector's residence no later than the closing hour.

This bill provides that the absentee ballots of certain electors defined as "military electors" under the bill shall be counted at the September primary and general (November) election if the ballots are received by mail bearing a postmark dated on or before election day and the ballots are received by the municipal clerk or board of election commissioners of the municipality where the elector resides no later than seven days after the September primary or no later than ten days after the general election. The bill provides that if a postmark is missing or illegible, and the ballot is received by mail, the ballot is presumed to be received by election day, unless established by a preponderance of the evidence to the contrary. Under the bill, a "military elector" is any individual who, as of election day, is: 1) a member of a uniformed service on active duty and who, by reason of that duty, is absent from his or her residence; 2) a member of the merchant marine and who, by reason of service in the merchant marine, is absent from his or her residence; or 3) the spouse or

## SENATE BILL 612

PWS A

4. Peace corps volunteers.

5. Spouses and dependents of the above who reside with or accompany them.

In general, and with some exceptions, a military elector is to vote in the ward or election district for the address of his or her residence prior to becoming a military elector. In general, military electors are not required to register as a prerequisite to voting in any election.

A military elector may request an absentee ballot for any election, or for all elections until the individual otherwise requests or until the person no longer qualifies as a military elector. An absentee ballot application from a military elector may be received at any time. In general, as an alternative to a regular absentee ballot request form, a federal postcard registration and absentee ballot request form may be used to apply for an absentee ballot by a military elector if the municipal clerk can determine that the applicant is qualified to vote in the election district where he or she seeks to vote and that the applicant is qualified to receive an absentee ballot as a military elector.

For military electors who are in the uniformed service and on active duty, members of the merchant marine, and the spouse and dependents of such persons who are absent because of the duty or service of the member, current law also provides that such electors may request an absentee ballot for the next 2 general elections. A municipal clerk must comply with such a request except that no absentee ballot may be sent for a succeeding general election if the elector's name appeared on the registration list for a previous general election and no longer appears on the registration list for the succeeding general election. Further, if the elector's address for the succeeding general election is in a municipality that is different from the municipality in which the elector resided for the first general election, current law requires the clerk to forward the request to the clerk of the municipality where the elector resides.

Currently, a municipal clerk must send a ballot, as soon as available, to each military elector who requests a ballot. However, the clerk may not send a ballot for an election if the application is received later than 5 p.m. on the Friday preceding that election. Whenever absentee ballots are sent to military electors, they must be prepared and mailed to make use of the federal free postage laws.

The bill modifies current law to provide that every request by any military elector must be treated as a request for an absentee ballot for all subsequent elections. Under the bill, if a municipal clerk receives a request for an absentee ballot from a military elector, the municipal clerk must send an absentee ballot to the elector for all elections that occur after the request is received. The bill allows a military elector to provide an alternate address on the absentee ballot application and requires the municipal clerk to send an absentee ballot to that alternate address if a ballot sent to the elector's primary address is returned as undeliverable.

The bill authorizes a municipal clerk to stop sending a ballot to a military elector in the following situations: (1) if 2 successive general elections go by and a military elector fails to return an absentee ballot for any election during that time period; (2) if the clerk is reliably informed that the elector is no longer a military elector or no longer resides in the municipality; (3) if the elector is subject to a registration requirement and his or her name no longer appears on the registration list as an eligible elector; or (4) if the elector so requests. Prior to discontinuing sending ballots to a military elector solely for the failure to return absentee ballots, the municipal clerk must notify the elector by mail that no future ballots will be sent unless the elector renews his or her absentee ballot request within 30 days. The bill also requires the municipal clerk to notify a military elector of any action to discontinue sending ballots to the elector not taken at the elector's request within 5 days of taking that action, if possible.

Late-Arriving Absentee Ballots From Military Electors

START  
HERE

Under current law, absentee ballots must be returned to the municipal clerk in time for delivery to the polls before the polls close. Any ballot not delivered by this deadline may not be counted.

## SENATE BILL 612

*This substitute amendment*  
*substitute amendment*  
*by law*  
 The bill provides that a vote cast on a ballot cast by a "military elector", as defined above, that is received by the municipal clerk after the close of the polls may, in some situations, still be counted. Under the bill, a vote cast on a ballot that is received after the polls close is considered a valid ballot if it is received by the clerk by the deadline for requesting a recount for the office for which the vote is cast and if it contains a postal service cancellation mark dated on or before the election day for which the ballot was cast. However, under the bill these ballots will not be counted unless a recount occurs. *municipal*

Under the bill, a certificate envelope sent to a military elector must be clearly labeled so that when it is returned the clerk will know that it is from a military elector. If a certificate envelope that is returned by a military elector after the polls close but before the deadline for the return of such ballots has an illegible postmark, or no postmark, it is presumed that the envelope was timely mailed, unless established otherwise. *or board of election commissioners*

*or board of election commissioners*  
 The bill directs the municipal clerk to post in his or her office on election night and on an internet site a statement announcing the number of absentee ballots that have not been returned by military electors by the closing of the polls. However, the posting may not include the names or addresses of any military electors.

Under the bill, if a recount petition is filed, the municipal clerk must immediately notify the appropriate board of canvassers as to the number of absentee ballots that were timely received after the polls closed and whether any absentee ballots that were sent to military electors have not been returned. If there are unreturned ballots at the time a recount petition has been filed, the bill provides that the recount may not proceed until all timely returned ballots are delivered by the clerk or 9 a.m. on the day following the last day for filing a recount petition, whichever occurs first. *or board of election commissioners*

*not*  
 As soon as practicable after receiving the last late-arriving ballot but in no case later than 9 a.m. on the day following the last day for filing a recount petition, the clerk must transmit to the appropriate board of canvassers all of the late-arriving ballots of military electors received by the clerk. *municipal*  
*or board of election commissioners*

*The bill provides that when*  
*amendment*  
 When the board of canvassers conducting a recount receives late-arriving absentee ballots cast by military electors, the board must first open and record the names of the military electors whose ballots have been received. If the late-arriving ballot cast by a military elector is otherwise valid, the board of canvassers must count the ballot and adjust the original statements, certifications, and determinations. After doing so, the board of canvassers may begin the recount.

#### Witness for Absentee Ballots

Under current law, military and overseas voters who cast absentee ballots must have a witness who is an adult U.S. citizen. All other absentee ballots must have a witness, but the age and nationality of the witness is not specified. The bill requires all absentee ballots to be witnessed by an adult U.S. citizen.

#### Elimination of Prepaid Return Postage and Notice of Hours

Generally, under current law, if the municipal clerk sends an absentee ballot to an elector, the ballot must include sufficient return postage to return the ballot from anywhere within the United States. The bill specifies that if the absentee ballot is mailed from outside the United States, the elector must affix sufficient postage for return of the ballot unless the ballot qualifies for mailing free of postage under federal law. The bill also modifies the notice that a clerk must post to include the hours that an elector can cast an absentee ballot in the clerk's office or an alternate site.

#### Opening Absentee Ballots in Public

Under current law, absentee ballot envelopes must be opened at the polling place during poll hours and the ballots placed in the ballot box without disclosing how the voter voted. When the envelopes are opened, the inspector is required to publicly announce the names or serial numbers of the absent electors casting the ballots.

END OF ANALYSIS

## SENATE BILL 612

## SECTION 10

1 elector is voting under this section or on a separate list maintained for the purpose  
2 under s. 6.79 (2) (c).

3 **SECTION 11.** 6.15 (6) of the statutes is amended to read:

4 6.15 (6) DEATH OF ELECTOR. When it appears by due proof to the inspectors or  
5 in municipalities where absentee ballots are canvassed under s. 7.52, when it  
6 appears by due proof to the board of absentee ballot canvassers that a person voting  
7 under this section at an election has died before the date of the election, the  
8 inspectors or board of absentee ballot canvassers shall return the ballot with  
9 defective ballots to the issuing official.

10 **SECTION 12.** 6.21 of the statutes is amended to read:

11 **6.21 Deceased electors.** When by due proof it appears to the inspectors or  
12 in municipalities where absentee ballots are canvassed under s. 7.52, when by due  
13 proof it appears to the board of absentee ballot canvassers that a person voting under  
14 this section casting an absentee ballot at an election has died before the date of the  
15 election, they the inspectors or board of absentee ballot canvassers shall return the  
16 ballot with defective ballots to the issuing official. The casting of the ballot of a  
17 deceased elector does not invalidate the election.

18 **SECTION 13.** 6.22 (2) (b) of the statutes is amended to read:

19 6.22 (2) (b) Notwithstanding s. 6.87 (4), a A military elector shall make and  
20 subscribe to the certification under s. 6.87 (2) before a witness who is an adult U.S.  
21 citizen.

22 **SECTION 14.** 6.22 (4) of the statutes is renumbered 6.22 (4) (a) <sup>and</sup> amended to read:

23 6.22 (4) (a) <sup>restore plain</sup> ~~An A request for an absentee ballot by an~~ individual who qualifies  
24 as a military elector <sup>restore plain</sup> ~~may shall be treated as a request for an absentee ballot for any~~  
25 election, <sup>plain</sup> ~~or for all elections until the individual otherwise requests or until the~~

<sup>restore</sup>

## SENATE BILL 612

*plain*  
*restored*  
1 individual no longer qualifies as a military elector. Upon receiving a timely request  
2 for an absentee ballot under par. (b) by an individual who qualifies as a military  
3 elector, the municipal clerk shall send or transmit to the elector an absentee ballot  
4 for all elections that occur in the municipality or portion thereof where the elector  
5 resides beginning on the date that the clerk receives the request.

6 (b) A military elector's application may be received at any time. The municipal  
7 clerk shall not send a ballot for an election if the application is received later than  
8 5 p.m. on the Friday preceding that election unless s. 6.87 (3) (d) applies. The  
9 municipal clerk shall send a ballot, as soon as available, to each military elector who  
10 requests a ballot.

11 (d) The board shall prescribe the instructions for marking and returning ballots  
12 and the municipal clerk shall enclose instructions with each ballot and shall also  
13 enclose supplemental instructions for local elections. The envelope, return envelope  
14 and instructions may not contain the name of any candidate appearing on the  
15 enclosed ballots other than that of the municipal clerk affixed in the fulfillment of  
16 his or her duties. Each certificate envelope that is mailed or transmitted to a military  
17 elector under this section shall be clearly labeled as "Cast by a military elector under  
18 s. 6.22, Wis. stats., and may be eligible to be counted after election day".

19 (e) Whenever the material is mailed, the material shall be prepared and mailed  
20 to make use of the federal free postage laws. If the material does not qualify for  
21 mailing without postage under federal free postage laws, the municipal clerk shall  
22 pay the postage required for mailing to the military elector. If the return envelope  
23 qualifies for mailing free of postage under federal free postage laws, the clerk shall  
24 affix the appropriate legend required by U.S. postal regulations. Otherwise the  
25 municipal clerk shall pay the postage required for return when the ballot is mailed

**SENATE BILL 612****SECTION 14**

1 from within the United States. If the ballot is not mailed by the military elector from  
2 within the United States the military elector shall provide return postage. The  
3 mailing list established under this subsection shall be kept current in the same  
4 manner as provided in s. 6.86 (2) (b).

5 **SECTION 15.** 6.22 (4) (c) of the statutes is created to read:

6 6.22 (4) (c) A military elector may indicate an alternate address on his or her  
7 absentee ballot application. If the elector's ballot is returned as undeliverable prior  
8 to the deadline for return of absentee ballots under s. 6.87 (6), and the elector remains  
9 eligible to receive absentee ballots under this section, the municipal clerk shall  
10 immediately send or transmit an absentee ballot to the elector at the alternate  
11 address.

12 **SECTION 16.** 6.22 (4) (f) to (h) of the statutes are created to read:

13 6.22 (4) (f) If there occur 2 successive general elections at which a military  
14 elector fails to return an absentee ballot sent or transmitted to the elector under par.  
15 (a) and the elector has not cast an absentee ballot at any intervening election, if the  
16 municipal clerk is reliably informed that the elector is no longer a military elector  
17 or no longer resides in the municipality, or if the elector so requests, the clerk shall  
18 discontinue sending or transmitting absentee ballots to the elector under this  
19 subsection. If a military elector who has requested an absentee ballot changes his  
20 or her residence from the municipality where a request is filed to another  
21 municipality in this state, the municipal clerk of the municipality who received the  
22 request shall notify the clerk of the municipality to which the elector's residence is  
23 changed of the date of the request or the latest renewal under par. (g) and the date  
24 of the most recent absentee ballot received by the clerk. The municipal clerk who is  
25 so notified shall treat the request as having been made to him or her.



**SENATE BILL 612****SECTION 16**

(g) Prior to any discontinuance of the service provided to a military elector under this subsection solely for failure to return absentee ballots, the municipal clerk shall mail the elector a 1st class letter or postcard notifying the elector that an absentee ballot will no longer be sent to the elector unless the elector renews his or her request within 30 days of the date of the notification.

(h) The municipal clerk shall notify a military elector of any action under par. (f) that is not taken at the elector's request within 5 days of taking that action, if possible.

**SECTION 17.** 6.22 (5) of the statutes is amended to read:

6.22 (5) VOTING PROCEDURE. Except as authorized in sub. (5m) and s. 6.25, the ballot shall be marked and returned, deposited and recorded in the same manner as other absentee ballots. In addition, the certification under s. 6.87 (2) shall have a statement of the elector's birth date. Failure to return any unused ballots in a primary election does not invalidate the ballot on which the elector casts his or her votes.

**SECTION 18.** 6.22 (5m) of the statutes is created to read:

6.22 (5m) TREATMENT OF BALLOTS RECEIVED AFTER CLOSE OF POLLS. (a) A vote cast on a ballot cast under this section that is received by the municipal clerk after the close of the polls but before the deadline for filing a petition for a recount under s. 9.01 (1) (a) for the office for which the vote is cast shall be treated as valid if the envelope in which the ballot was received bears a postal service cancellation mark dated on or before the election day for which the ballot was cast, but may only be counted for purposes of a recount under s. 9.01.

(b) For purposes of par. (a), if a certificate envelope is not postmarked or has a postmark that is not legible to the municipal clerk, board of canvassers, or the board

**SENATE BILL 612****SECTION 18**

1 of absentee ballot canvassers in municipalities where absentee ballots are canvassed  
2 under s. 7.52, and the envelope was received by mail from the U.S. postal service, it  
3 is presumed that the envelope was placed in the mail on or before election day, unless  
4 established by a preponderance of the evidence to the contrary.

5 (c) No later than the closing hour of the polls, the municipal clerk of each  
6 municipality shall post at his or her office, at any alternate site under s. 6.855, and  
7 on the Internet at a site announced by the clerk before the polls open, and shall make  
8 available to any person upon request, a statement of the number of absentee ballots  
9 that the clerk has mailed or transmitted to military electors under this section and  
10 that have not been returned by the closing hour on election day. The posting shall  
11 not include the names or addresses of any military electors.

12 (d) All ballots received by the municipal clerk under this subsection by the  
13 deadline specified in par. (a) shall be carefully preserved by the municipal clerk until  
14 destruction or other disposition is authorized under s. 7.23. If a petition for a recount  
15 is filed under s. 9.01, the clerk shall immediately notify the appropriate board of  
16 canvassers as to whether any absentee ballots that have been mailed or transmitted  
17 to military electors under this section have been received after the closing of the polls  
18 or have not been returned.

19 (dm) If the clerk notifies the board of canvassers that any ballots that have been  
20 mailed or transmitted to military electors under this section have not been returned,  
21 the board of canvassers shall not proceed with the recount until all such ballots have  
22 been returned to the clerk and transmitted to the board of canvassers, or 9 a.m. on  
23 the day following the last day for filing of a petition for the recount, whichever occurs  
24 first.

**SENATE BILL 612**

1 (e) The clerk shall transmit to the appropriate board of canvassers all ballots  
2 received under par. (a) by the clerk as soon as practicable after receiving the last  
3 ballot but in no case later than 9 a.m. on the day following the last day for filing a  
4 petition for the recount under s. 9.01.

5 (f) Whenever a board of canvassers conducting a recount receives absentee  
6 ballots cast by military electors as provided in par. (e), the board of canvassers shall  
7 first proceed to open and record the names of the military electors whose ballots have  
8 been received. If the ballot cast by a military elector is otherwise valid, the board of  
9 canvassers shall count the vote cast on the ballot for the office being recounted and  
10 shall adjust the original statements, certifications, and determinations accordingly.

11 (g) The board of canvassers shall then proceed with the recount under s. 9.01

12 (1) (b).

13 **SECTION 19.** 6.24 (4) (d) of the statutes is amended to read:

14 6.24 (4) (d) An overseas elector who is not registered may request both a  
15 registration form and an absentee ballot at the same time, and the municipal clerk  
16 shall send the ballot automatically if the registration form is received within the time  
17 prescribed in s. 6.28 (1). The board shall prescribe a special certificate form for the  
18 envelope in which the absentee ballot for overseas electors is contained, which shall  
19 be substantially similar to that provided under s. 6.87 (2). ~~Notwithstanding s. 6.87~~  
20 ~~(4), an~~ An overseas elector shall make and subscribe to the special certificate form  
21 before a witness who is an adult U.S. citizen.

22 **SECTION 20.** 6.24 (6) of the statutes is amended to read:

23 6.24 (6) INSTRUCTIONS AND HANDLING. The municipal clerk shall send a ballot,  
24 as soon as available, to each overseas elector by whom a request has been made. The  
25 board shall prescribe the instructions for marking and returning ballots and the

## SENATE BILL 612

## SECTION 83

1 not invalidate the ballot on which the elector's votes are cast. Return of more than  
2 one marked ballot in a primary or return of a ballot prepared under s. 5.655 or a ballot  
3 used with an electronic voting system in a primary which is marked for candidates  
4 of more than one party invalidates all votes cast by the elector for candidates in the  
5 primary.

6 **SECTION 84.** 6.87 (6) of the statutes is amended to read:

7 6.87 (6) The Except as provided in s. 6.22 (5m), the ballot shall be returned so  
8 it is received by the municipal clerk in time for delivery no later than 8 p.m. on  
9 election day. Except in municipalities where absentee ballots are canvassed under  
10 s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk  
11 shall secure the ballot and cause the ballot to be delivered to the polls/polling place  
12 serving the elector's residence before the closing hour. Any Except as provided in s.  
13 6.22 (5m), any ballot not mailed or delivered as provided in this subsection may not  
14 be counted.

15 **SECTION 85.** 6.87 (9) of the statutes is amended to read:

16 6.87 (9) If a municipal clerk receives an absentee ballot with an improperly  
17 completed certificate or with no certificate, the clerk may return the ballot to the  
18 elector, inside the sealed envelope when an envelope is received, together with a new  
19 envelope if necessary, whenever time permits the elector to correct the defect and  
20 return the ballot within the period prescribed in authorized under sub. (6).

21 **SECTION 86.** 6.875 (4) and (6) of the statutes are amended to read:

22 6.875 (4) For the purpose of absentee voting in nursing homes and qualified  
23 retirement homes and qualified community-based residential facilities, the  
24 municipal clerk or board of election commissioners of each municipality in which one  
25 or more nursing homes or qualified retirement homes or qualified community-based

## SENATE BILL 612

## SECTION 151

2. If the difference between the votes cast for the leading candidate and those cast for the petitioner or the difference between the affirmative and negative votes cast upon any referendum question is more than 2% if more than 1,000 votes are cast prior to issuance of any amended return under s. 6.22 (5m) (f), the petitioner shall pay a fee equal to the actual cost of performing the recount in each ward for which the petition requests a recount, or in each municipality for which the petition request a recount where no wards exist.

**SECTION 152.** 9.01 (1) (ag) 2m. of the statutes is created to read:

9.01 (1) (ag) 2m. For purposes of subds. 1m. and 2., the number of votes cast at an election excludes any votes that may be eligible to be counted under s. 6.22 (5m) (a).

**SECTION 153.** 9.01 (1) (b) (intro.) of the statutes is amended to read:

9.01 (1) (b) (intro.) The Except as provided in this paragraph, the proper board of canvassers shall reconvene no earlier than 9 a.m. on the day following delivery of notice to all candidates under sub. (2) and no later than 9 a.m. on the day following the last day for filing of a petition and proceed to recount the ballots in the wards or municipalities specified and to review the allegations of fact contained in the petition or petitions. If s. 6.22 (5m) (dm) applies, the board of canvassers shall not proceed with the recount until 9 a.m. on the day following the last day for filing of a petition and, if s. 6.22 (5m) (e) applies, shall not proceed with the recount until it complies with s. 6.22 (5m) (f). The recount shall proceed for each ward or municipality as follows:

**SECTION 154.** 9.01 (10) of the statutes is amended to read:

9.01 (10) STANDARD FORMS AND METHODS. The elections board shall prescribe standard forms and procedures for the making of recounts under this section. The

**SENATE BILL 612****SECTION 181**

1 (7) NOTIFICATION REGARDING INELIGIBILITY TO VOTE DURING PROBATION. The  
2 treatment of section 973.09 (4m) of the statutes first applies to persons whom the  
3 court places on probation on the effective date of this subsection.

4 (8) NOTIFICATION AT SENTENCING REGARDING INELIGIBILITY TO VOTE. The treatment  
5 of section 973.176 (2) of the statutes first applies to persons who are sentenced or  
6 placed on probation on the effective date of this subsection.

7 (9) ELECTION OFFICIAL TRAINING. The treatment of sections 7.15 (1m), 7.30 (2)  
8 (c), and 7.315 of the statutes first applies with respect to elections held in 2008.

9 **SECTION 182. Effective date.**

10 (1) This act takes effect on July 1, 2006, or on the day after publication,  
11 whichever is later.

12 (END)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

December 6, 2005

50596/1  
LRB-3947/Tdn

JTK:cjs:ch 2

cjs:K

Senator Leibham:

Robert Conlin:

1. Section 5.68 (1) and (2), stats. relates to apportionment of the costs of acquisition of, among other things, election apparatus, ballots, supplies and other materials. Proposed s. 5.68 (3m) directs the election administration council to provide guidance to local governments covering the procurement of election apparatus, ballot forms and supplies. You may wish to consider broadening the scope of proposed s. 5.68 (3m) to cover ballots as well as ballot forms and to cover materials as well as supplies.

2. Proposed s. 6.22 (4) (c) provides that a military elector may indicate an alternate address on his or her absentee ballot application. Under the draft, if the elector's ballot is returned as undeliverable prior to the deadline for return of absentee ballots, the clerk must send or transmit an absentee ballot to the elector at the alternate address. Because under proposed s. 6.86 (1) (c) the deadline for military electors to request absentee ballots is 5 p.m. on the Friday before an election, the draft may not accord sufficient time in some situations for the clerk to mail an absentee ballot, have the ballot returned, and then mail an absentee ballot to an alternate site, and for the elector to receive and vote the ballot and have the voted ballot postmarked by election day.

3. Proposed s. 6.22 (5m) and related provisions, which permit military electors, as defined in s. 6.22 (1) (b), stats., to have their ballots delivered and counted after election day as long as they are postmarked by election day, would, in cases where a recount is requested, require canvasses to be reopened before a recount could proceed. It is difficult to say how much time might be used in the reopening of a canvass. However, because under current law most local elective officials take office either 7, 14 or 21 days after the date of the spring election, it is difficult currently in many cases to complete a recount in time for the winner to take office on the appointed day. The change could make it somewhat more difficult than it is currently. If an elective official cannot take office on time, it can have an effect upon who is appointed to other offices (such as county board chair or member of a city commission) whose terms begin shortly after the term of the elective official who appoints the official.

4. Also with respect to proposed s. 6.22 (5m) and related provisions, currently, under s. 7.15 (1) (cm), stats., municipalities must transmit absentee ballots to all absentee voters who have requested ballots, including the voters who are affected by this draft,

no later than 21 days before the spring election and no later than 30 days before the general election. Although calendar fluctuations can make this task more difficult or less difficult to complete within the time prescribed by law, as a general rule the time allotted for canvassing of the spring and September primaries and ballot preparation for the spring and general elections is used completely. Therefore, under this draft it is likely that, in municipalities where military electors do not return absentee ballots by election night, unless municipal clerks and boards of election commissioners exercise an unusual degree of initiative and municipalities agree to take on some additional costs for expedited printing service, absentee ballots could be distributed as late as approximately 15 days before the spring election and as late as approximately 24 days before the general election. This will make it more difficult for these ballots to be returned through the world mail system by election day. The voters who are affected by this draft will have extra time to return their ballots, but these voters could still be impacted to some degree by this change if their current ballot transit times are less than approximately seven days.

3 5. Proposed s. 6.22 (5m) permits the ballots of military electors to be counted under certain conditions if received after election day. Proposed s. 6.86 (1) (c) provides a later deadline for military electors to apply for an absentee ballot than is provided for other electors. The proposed treatment of s. 6.86 (1) (b), stats., similarly provides a later deadline for indefinitely confined electors to apply for an absentee ballot than is provided for other electors. Although these provisions generally provide a dispensation, the effect of the provisions is to create a procedure under which the ballots of electors may either be counted or not counted or absentee ballots may be provided or not provided based upon the status of the electors, which could raise an equal protection issue. The U.S. Supreme Court has sometimes approved distinctions made by states in the treatment of absentee voters. However, the Court has said that because voting is a fundamental right, any distinction made by a state will be subject to close scrutiny. See *McDonald v. Board of Election Commissioners*, 393 U.S. 1404, 1407 (1969), in which the Court, after applying this scrutiny, nevertheless permitted Illinois to make a distinction based upon prisoner status. One argument that could be advanced in support of this draft is that national security requires disparate treatment of the ballots of military electors, as defined in this draft, and that the conditions under which those electors must operate may prevent them from taking advantage of the same procedures for expeditious absentee balloting that other electors can conveniently use. It may also be argued that the type of treatment proposed in this draft is not invidious, which may distinguish it from other situations. It is possible to argue, however, that the class of electors that is affected by this draft may not be drawn with sufficient closeness to provide the state with a sufficient basis for treating their ballots differently in every case. Because the Court does not appear to have ruled on this point, it is not possible to predict how the issue posed by this draft will be assessed.

6. The treatment of s. 6.28 (1), stats., to change the deadline for voter registration from 13 days before an election to 20 days before an election will increase the number of voters who must register at an address where they do not expect to be residing on the 10th day before election day, which under s. 6.10 (1), stats., fixes an elector's voting residence. If moving from one election district to another, these electors will need to

^ JTK



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

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JTK:cjs&lk:rs

February 28, 2006

Senator Liebham:

1. Proposed s. 6.22 (5m) and related provisions, which permit military electors, as defined in s. 6.22 (1) (b), stats., to have their ballots delivered and counted after election day as long as they are postmarked by election day, would, in cases where a recount is requested, require canvasses to be reopened before a recount could proceed. It is difficult to say how much time might be used in the reopening of a canvass. However, because under current law most local elective officials take office either 7, 14 or 21 days after the date of the spring election, it is difficult currently in many cases to complete a recount in time for the winner to take office on the appointed day. The change could make it somewhat more difficult than it is currently. If an elective official cannot take office on time, it can have an effect upon who is appointed to other offices (such as county board chair or member of a city commission) whose terms begin shortly after the term of the elective official who appoints the official.
2. Also with respect to proposed s. 6.22 (5m) and related provisions, currently, under s. 7.15 (1) (cm), stats., municipalities must transmit absentee ballots to all absentee voters who have requested ballots, including the voters who are affected by this draft, no later than 21 days before the spring election and no later than 30 days before the general election. Although calendar fluctuations can make this task more difficult or less difficult to complete within the time prescribed by law, as a general rule the time allotted for canvassing of the spring and September primaries and ballot preparation for the spring and general elections is used completely. Therefore, under this draft it is likely that, in municipalities where military electors do not return absentee ballots by election night, unless municipal clerks and boards of election commissioners exercise an unusual degree of initiative and municipalities agree to take on some additional costs for expedited printing service, absentee ballots could be distributed as late as approximately 15 days before the spring election and as late as approximately 24 days before the general election. This will make it more difficult for these ballots to be returned through the world mail system by election day. The voters who are affected by this draft will have extra time to return their ballots, but these voters could still be impacted to some degree by this change if their current ballot transit times are less than approximately seven days.
3. Proposed s. 6.22 (5m) permits the ballots of military electors to be counted under certain conditions if received after election day. Proposed s. 6.86 (1) (c) provides a later

deadline for military electors to apply for an absentee ballot than is provided for other electors. The proposed treatment of s. 6.86 (1) (b), stats., similarly provides a later deadline for indefinitely confined electors to apply for an absentee ballot than is provided for other electors. Although these provisions generally provide a dispensation, the effect of the provisions is to create a procedure under which the ballots of electors may either be counted or not counted or absentee ballots may be provided or not provided based upon the status of the electors, which could raise an equal protection issue. The U.S. Supreme Court has sometimes approved distinctions made by states in the treatment of absentee voters. However, the Court has said that because voting is a fundamental right, any distinction made by a state will be subject to close scrutiny. See *McDonald v. Board of Election Commissioners*, 89 S. Ct. 1404, 1407 (1969), in which the Court, after applying this scrutiny, nevertheless permitted Illinois to make a distinction based upon prisoner status. One argument that could be advanced in support of this draft is that national security requires disparate treatment of the ballots of military electors, as defined in this draft, and that the conditions under which those electors must operate may prevent them from taking advantage of the same procedures for expeditious absentee balloting that other electors can conveniently use. It may also be argued that the type of treatment proposed in this draft is not invidious, which may distinguish it from other situations. It is possible to argue, however, that the class of electors that is affected by this draft may not be drawn with sufficient closeness to provide the state with a sufficient basis for treating their ballots differently in every case. Because the Court does not appear to have ruled on this point, it is not possible to predict how the issue posed by this draft will be assessed.

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